

Case 2:10-cv-00856-GHK -E Document 55 Filed 10/21/10 Page 1 of 8 Page ID #:386

1 R. James Miller, SBN 170312
2 POWERS & MILLER
3 1545 River Park Drive, Suite 515
Sacramento, California 95815
Telephone No. (916) 924-7900
Telecopier No. (916) 924-7980
4

5 Attorneys for Defendants
EBI MEDICAL SYSTEMS, INC., a Delaware
Corporation and BIOMET INC.
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7

8 UNITED STATES DISTRICT COURT
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10 CENTRAL DISTRICT OF CALIFORNIA
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12 JOHN FRANCIS, an individual,) Case No.: CV 10-856 GHK (Ex)
13 Plaintiff,)
14 vs.) [REDACTED] PROTECTIVE ORDER RE:
15 EBI MEDICAL SYSTEMS, INC., a) DEFENDANT'S PRODUCTION OF
Delaware Corporation and BIOMET) PROPRIETARY AND CONFIDENTIAL
INC., and Does 1 to 100) BUSINESS DOCUMENTS
16)
17)
18 Defendants.)
19)
20 _____

21 It is hereby stipulated and agreed, by and between the
22 parties to the above identified action, through their
23 respective counsel, that the terms and conditions of this
24 Stipulated Protective Order shall govern the production and
25 handling of documents, answers to interrogatories, responses to
26 requests for admissions, depositions, pleadings, exhibits and
27 other information exchanged by the parties in this action.

28 IT IS HEREBY ORDERED AS FOLLOWS:

Case 2:10-cv-00856-GHK -E Document 55 Filed 10/21/10 Page 2 of 8 Page ID #:387

1 1. This Order shall be applicable to and govern all
2 depositions, documents produced in response to requests for
3 production of documents, answers to interrogatories, responses
4 to requests for admissions and all other discovery taken
5 pursuant to the Code of Civil Procedure and other information
6 which the disclosing party designates as "CONFIDENTIAL
7 MATERIAL" furnished, directly or indirectly, in this action.

8 2. In designating information as "CONFIDENTIAL MATERIAL" a
9 party shall make such a designation only as to materials which
10 that party in good faith believes constitutes proprietary
11 information that is used by it in, or pertaining to, its
12 business, which information is not generally known and which
13 that party would normally not reveal to third parties or, if
14 disclosed, would cause such third parties to maintain in
15 confidence.

16 3. CONFIDENTIAL MATERIAL shall be used by the parties in this
17 action solely for the purpose of conducting this litigation,
18 and not for any other purpose whatsoever.

19 4. Information designated as "CONFIDENTIAL MATERIAL" may be
20 disclosed only to the following persons:

21 a. outside counsel working on this action on behalf of
22 any party, including all paralegal assistants,
23 stenographic and clerical employees working under the
24 supervision of such counsel;

25 b. in-house counsel of each of the parties, as well as
26 all paralegal assistants, stenographic and clerical
27 employees working under the direct supervision of
28 such counsel;

- 1 c. outside experts for each party who are expressly
2 retained by any attorney described in paragraphs
3 4(a)-(b) to assist in preparation of this action for
4 trial, with disclosure only to the extent necessary
5 to perform such work;
- 6 d. persons or organizations expressly retained to assist
7 or serve as translators, interpreters, copy services,
8 court reporters, and document/information
9 consultants; and,
- 10 e. the Court, under seal or with other suitable
11 precaution calculated to maintain confidentiality.

12 5. The recipient of any CONFIDENTIAL MATERIAL hereby agrees
13 to subject himself/herself to the jurisdiction of this Court
14 for the purpose of any proceedings relating to the performance
15 under; compliance with, or violation of this Protective Order.

16 6. The recipient of any CONFIDENTIAL MATERIAL that is
17 provided under this Order shall maintain such information in a
18 secure and safe area and shall exercise the same standard of
19 due and proper care with respect to the storage, custody, use
20 and/or dissemination of such information as is exercised by the
21 recipient with respect to its own proprietary information.

22 7. Parties shall designate CONFIDENTIAL MATERIAL as such by:
23 a. marking each page of each document or tangible items
24 deemed to be CONFIDENTIAL MATERIAL as such, in a manner
25 that is reasonably appropriate; and
26 b. identifying portions of any transcript (including
27 exhibits) which contains CONFIDENTIAL MATERIAL as such by
28 making a statement to such effect on the record, or by

1 designating such within fifteen (15) business days after
2 counsel's receipt of the transcript. Pending such
3 designation by counsel, the entire deposition transcript,
4 including exhibits, shall be deemed CONFIDENTIAL MATERIAL;
5 if no designation is made within fifteen (15) business
6 days after receipt of the transcript, the transcript shall
7 be considered not to contain any CONFIDENTIAL MATERIAL.
8 A party shall not be obligated to challenge the propriety
9 of any CONFIDENTIAL MATERIAL designation at the time made,
10 and failure to do so shall not preclude a subsequent
11 challenge thereto. In the event that any party to this
12 litigation disagrees at any stage of these proceedings
13 with such designation, such party shall provide to the
14 producing party, ten (10) days prior to seeking relief,
15 written notice of its disagreement with the designation.
16 The parties shall first try in good faith to dispose of
17 such dispute on an informal basis. If the dispute cannot
18 be resolved, the party challenging the designation may
19 request appropriate relief from the Court following the
20 specified ten (10) day period. The burden of proving that
21 information has been properly designated as CONFIDENTIAL
22 MATERIAL is on the party making such designation.

23 8. CONFIDENTIAL MATERIAL to be used at trial shall in
24 accordance with Local Rule 79-5, et al. be filed under seal
25 following a noticed motion to seal. Upon order of the Court
26 following motion to seal, the Clerk of the Court is requested
27 to maintain under seal only those pages of documents and
28 transcripts of deposition testimony filed with this Court in

Case 2:10-cv-00856-GHK -E Document 55 Filed 10/21/10 Page 5 of 8 Page ID #:390

1. this litigation by any party which are designated as
2 CONFIDENTIAL MATERIAL, including all pages of depositions and
3 hearing transcripts, exhibits, discovery responses or memoranda
4 purporting to contain or paraphrase such information. The
5 person filing such material shall advise the Clerk that a
6 designated portion thereof is subject to this Order and is to
7 be kept under seal, except that upon the default of the filing
8 party to so designate, any party may do so.

9. The restrictions provided for herein shall not terminate
10. upon the conclusion of this action but shall continue until
11 further order of this Court; provided, however, that this
12 Protective Order shall not be construed: (a) to prevent any
13 party or its counsel from making use of information which was
14 lawfully in its possession prior to its disclosure by the
15 producing party, (b) to apply to information which appears in
16 issued patents or printed publications or becomes publicly
17 known, or (c) to apply to information which any party or its
18 counsel has, since disclosure by the producing party, shall
19 hereafter lawfully obtain from a third party having the right
20 to disclose such information.

21. Nothing in this Order shall preclude any party to the
22 lawsuit or their attorneys (a) from showing a document
23 designated as CONFIDENTIAL MATERIAL to an individual who, prior
24 to the filing of this action, either authored or was copied on
25 the distribution of the document, as indicated on the
26 document's face or other documentary evidence; or (b) from
27 disclosing or using, in any manner or for any purpose, any
28 information or documents from the party's own files which the

Case 2:10-cv-00856-GHK -E Document 55 Filed 10/21/10 Page 6 of 8 Page ID #:391

1 party itself has designated as CONFIDENTIAL MATERIAL.

2 11. Material produced without the designation of
3 CONFIDENTIAL

4 MATERIAL may be so designated subsequent to production if the
5 producing party provides replacement materials bearing
6 appropriate designations and notifies the receiving party
7 promptly after becoming aware of same that the producing party
8 failed to make such designation at the time of production. If
9 discovery material is redesignated CONFIDENTIAL MATERIAL, the
10 receiving party shall collect any copies that have been
11 provided to individuals other than those identified in
12 paragraph 4 of this Order.

13 12. Any discovery documents produced in this litigation
14 may be

15 later designated as "Attorney Client Privilege" or "Attorney
16 Work Product" promptly upon discovery by the producing party
17 that any such privileged or immune document was produced
18 through inadvertence, mistake, or other error, and no waiver of
19 privilege or immunity shall be deemed to have occurred. Upon
20 such designation, the receiving attorney promptly shall collect
21 all copies of the documents and return them to the producing
22 party. In the event that the receiving attorney believes in
23 good faith that the producing party cannot properly assert any
24 privilege or immunity with respect to the documents, the
25 receiving attorney shall segregate such documents and promptly
26 (but not later than fifteen days after such re-designation)
27 file a motion to compel production of the documents; otherwise,
28 any such motion to compel shall be deemed waived.

Case 2:10-cv-00856-GHK -E Document 55 Filed 10/21/10 Page 7 of 8 Page ID #:392

1. 13. Within sixty (60) days of the termination of this
2. action,

3. all CONFIDENTIAL MATERIAL received by parties eligible to
4. receive information under paragraphs 4(c)-(d) hereof, and all
5. copies thereof, shall either be returned to the party which
6. produced same or destroyed. If copies of CONFIDENTIAL MATERIAL
7. are destroyed, the destroying party shall certify in writing
8. that said documents have been destroyed within the sixty (60)
9. day time period.

10. 14. This Stipulated Protective Order is without prejudice
11. to the right of any party to seek relief from the Court, upon
12. good cause shown from any of the provisions contained in
13. paragraphs 1 through 15, inclusive, hereof.

14. 15. Paragraphs 1 through 15, inclusive, of this
15. Stipulated Protective Order relating to the designation and
16. treatment of documents as CONFIDENTIAL MATERIAL also are
17. applicable to any discovery obtained from or provided by
18. persons or entities who/which are not parties to this action
19. ("Non-Parties"). Discovery obtained from such Non-Parties (i)
20. may be designated by the producing Non-Party as "CONFIDENTIAL
21. MATERIAL" as that term is defined herein, and (ii) shall be
22. treated in the same manner as if it were obtained from a party.
23. The District Court from which a subpoena for such discovery of
24. Non-Parties properly issues also shall have power to enforce
25. the foregoing provisions upon application by the Non-Parties on
26. whom which the subpoena was served.

27. ///

28. ///

Case 2:10-cv-00856-GHK-E Document 55 Filed 10/21/10 Page 8 of 8 Page ID #:393

Dated: 10/21/10


MAGISTRATE JUDGE OF THE
UNITED STATES DISTRICT COURT

Approved as to form and content:

DATED: 10/20/2010

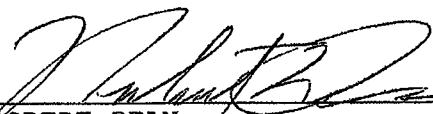
POWERS & MILLER

By: 

R. JAMES MILLER
Attorneys for Defendants
EBI MEDICAL SYSTEMS, INC.,
and BIOMET, INC.

DATED: 10/20/2010

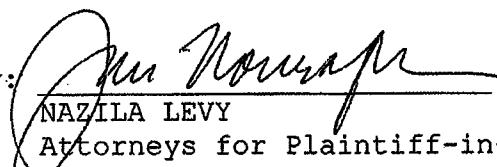
SPRAY, GOULD & BOWERS, LLC.

By: 

ROBERT DEAN
Attorneys for Plaintiff,
JOHN FRANCIS

DATED: 10/20/2010

LEVY & NOURAFCHAN, LLP

By: 

NAZILA LEVY
Attorneys for Plaintiff-in-
Intervention, SOUTHERN
CALIFORNIA GAS CO.

DATED: 10/20/10

A. BENNETT COMBS

By: 

BENNETT COMBS
Attorneys for Defendants,
PACIFIC SURGICAL DISTRIBUTION,
LLC.